



July 24, 2019

**VIA E-MAIL**

FOIA and Transparency  
Department of the Treasury  
Washington, D.C. 20220  
E-mail: FOIA@treasury.gov

**Re: Freedom of Information Act Request**

Dear FOIA Officer:

I write on behalf of Americans for Prosperity (“AFP”), a 501(c)(4) nonpartisan organization that drives long-term solutions to the country’s biggest problems.<sup>1</sup>

According to the charter for the Export-Import Bank (“EXIM”), EXIM is required to conduct outreach with foreign export entities and international organizations to reduce the use of government subsidized export financing: “The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing.”<sup>2</sup> The Government Accountability Office notes that EXIM “under the leadership of the U.S. Treasury, participates in ongoing OECD negotiations to minimize export financing competition and reduce government export credit subsidies.”

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, AFP hereby requests all records evidencing EXIM’s attempts, with the assistance of the Department of Treasury (“Treasury”) to “reach international agreements to reduce government subsidized export financing” working with the U.S. Treasury.<sup>3</sup> This would include, but not be limited to:

1. All internal communications regarding Treasury’s actions to assist EXIM “reduce government subsidized export financing.”
2. All external communications, including but not limited to the following entities, regarding Treasury’s actions to assist EXIM “reduce government subsidized export financing.”

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<sup>1</sup> See AMERICANS FOR PROSPERITY *About*, [www.americansforprosperity.org/about](http://www.americansforprosperity.org/about).

<sup>2</sup> See 12 U.S. Code § 635. (b)(1)(A).

<sup>3</sup> The term “record” means the entirety of the record any portion of which contains responsive information. See *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, 830 F.3d 667, 677–78 (D.C. Cir. 2016) (admonishing agency for withholding information as “non-responsive” because “nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields that information from disclosure”).

U.S. Department of the Treasury  
July 24, 2019  
Page 2

- a. The White House
  - b. Export-Import Bank
  - c. Export financing instrumentalities of other governments
  - d. International organizations
  - e. Other individuals or organizations relevant for complying with the charter.
3. All records (memoranda, policy documents) regarding Treasury's actions to assist EXIM to "reduce government subsidized export financing."

The time period for this request is January 1, 2015 to the present.<sup>4</sup>

For the purposes of this request, please omit daily news clippings or other mass mailings unless there is commentary related to them. For all items of this request, if the agency uncovers responsive email records, AFP's request specifically seeks the entirety of any email chain, any portion of which contains an individual email message responsive to this request, *i.e.*, the entire email chain is responsive. If the agency identifies responsive records that it deems outside its legal control (*e.g.*, congressional records), AFP requests that the agency inform it that such records exist.

#### **Request for a Public Interest Fee Waiver**

AFP requests a waiver of any and all applicable fees. The FOIA and applicable regulations provide that the agency shall furnish requested records without or at reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."<sup>5</sup> In this case, the requested records unquestionably shed light on the "operations or activities of the government" as they show whether or not EXIM is complying with its own charter. Responsive records will significantly contribute to public understanding because, to date, EXIM and Treasury has not provided evidence that is making efforts to reduce government export credit subsidies.

AFP has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has experience and expertise in producing analysis of government decision making and policy. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through the AFP's regularly published online newsletter, blog posts, or press releases.<sup>6</sup> In addition, as AFP is a non-profit organization as defined under Section 501(c)(4) of the Internal Revenue Code, it has no commercial interest in making this request.

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<sup>4</sup> For purposes of this request, the term "present" should be construed as the date on which the agency begins its search for responsive records. *See Pub. Citizen v. Dep't of State*, 276 F.3d 634 (D.C. Cir. 2002). The term "record" means the entirety of the record any portion of which contains responsive information.

<sup>5</sup> 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm'n*, 799 F.3d 1108, 1115–19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

<sup>6</sup> *See also Cause of Action*, 799 F.3d at 1125–26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

U.S. Department of the Treasury  
July 24, 2019  
Page 3

**Request to Be Classified as a Representative of the News Media**

As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.<sup>7</sup> AFP satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. Although it is not required by the statute, AFP gathers the news it regularly publishes from a variety of sources. It does not merely make raw information available to the public, but rather distributes distinct work products, including press releases, blog posts, policy briefs, newsletters, regulatory comments, coalition letters, letters to congress, and congressional testimony.<sup>8</sup> These distinct works are distributed to the public through various media, including AFP’s website, Twitter, and Facebook. AFP also provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” contemplates that organizations such as AFP, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>9</sup>

**Record Production and Contact Information**

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, AFP requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (703) 785-1933 or by e-mail at [MLambert@afphq.org](mailto:MLambert@afphq.org). Thank you for your attention to this matter.

*Michael Lambert*

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MICHAEL LAMBERT  
FEDERAL POLICY ANALYST

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<sup>7</sup> See *id.* at 1121.

<sup>8</sup> See, e.g., AFP, AFP ON EX-IM BANK: CORPORATE WELFARE BY ANY NAME IS CORPORATE WELFARE (June 2019), <http://bit.ly/2LmaclC>; AFP, NEW REPORT WARNS SOCIAL SECURITY CRISIS IS NEARLY HERE (June 2019), <http://bit.ly/2NePKpG>; AFP, AFP ISSUES KEY VOTE ALERT AGAINST \$300+ BILLION “MINIBUS” SPENDING BILL (June 2019), <http://bit.ly/2FtwSXd>; AFP, COALITION CALLS FOR MORE SUNSHINE IN DOJ (May 2019), <http://bit.ly/2XyL81k>; AFP, MEMO: CBO’S GRIM BUDGET OUTLOOK UNDERSCORES THE NEED FOR CHANGE (Jan. 2019), <http://bit.ly/2NgDLrv>; AFP, AFP OFFICIAL COMMENT IN SUPPORT OF THE SAFER AFFORDABLE FUEL EFFICIENT (SAFE) VEHICLES PROPOSED RULE FOR MODEL YEARS 2021-2026 (Oct. 2018), <http://bit.ly/2YcYw8F>;

<sup>9</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).